



Appeal Decision

Site visit made on 12 June 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 25th July 2023

Appeal Ref: APP/C1625/C/22/3301660

Land adjacent to Rose Cottage, Stroud Road, Whaddon, Gloucester, GL4 0UG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Shayne Bishop against an enforcement notice issued by Stroud District Council.
 - The notice was issued on 18 May 2022.
 - The breach of planning control as alleged in the notice is "Without planning permission, within the last four years, the formation of a large hard surfaced area which included alterations to the track, the storing of a significant quantity of rubble, waste material and building material upon agricultural land and alterations to the access.
 - The requirements of the notice are to: "(1) Cease all non-agricultural use on the land; (2) Remove all waste materials consisting of but not limited to crushed stone and rubble, from the land, having due considering to the Wildlife and Countryside Act 1981 to minimise harm to reptiles; (3) Remove all stored building and other materials from the site; (4) Remove the hard standing from the land; (5) Return access to its previous condition; (6) Restore the land to its condition prior to the breach".
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Formal Decision

2. It is directed that the enforcement notice is corrected by:
 - a) deleting paragraph 3 and substituting it with the following new paragraph 3:

The Matters Which Appear to Constitute the Breach of Planning Control

Without planning permission:

1. the formation of a hard surfaced area and alterations to the access and access track; and
2. the change of use of the land from agricultural to a mixed agricultural and non-agricultural use for the storage of rubble, waste and building materials.

and varied by:

b) deleting requirement (1) from paragraph 5 and substituting it with the following new requirement:

1. Cease the mixed agricultural and non-agricultural use for the storage of rubble, waste and building materials.
3. Subject to these corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. I have corrected the allegation so that the operational development and the material change of use are clearly identified and separated. This ensures that the requirements, and particularly the requirement to cease the non-agricultural use of the land, align properly with the matters alleged to constitute the breach of planning control.
5. Given that the agricultural use of the land subsists (which is apparent from the evidence), I have also corrected the notice to ensure that the matters alleged to constitute the breach specifically reference the mixed use of the site, for both agricultural and non-agricultural use. I have also made a corresponding variation to the requirements, so that the first requirement specifically requires cessation of this mixed agricultural and non-agricultural use. These amendments ensure that the requirements do not go beyond the purpose of remedying the breach. I am satisfied that these corrections and variations would not cause injustice to either party, as the substance of the allegations and the requirements remains the same.
6. Since the enforcement notice (EN) was issued, the appellant has complied with a number of its requirements. These include ceasing the non-agricultural use of the land, removal of all waste materials, and removal of all stored building and other materials from the site. The Council does not dispute these elements have been complied with, a position which reflects my own observations during the site visit. Nonetheless, the appeal must be determined with regard to the alleged breaches of planning control at the time the EN was issued, as the breach described in the EN forms the basis of the deemed planning application pursuant to ground (a). In turn, these factors still form part of the reasoning to this decision.
7. The specified reasons for issuing the EN primarily relate to the location of the development in the open countryside and its effect on the character and appearance of the area. However, both parties have addressed the highway safety implications of the development in their evidence, which I agree are relevant. I have therefore dealt with these as a main issue.

Main Issues

8. In this context, the main issues are:
 - whether the location of the development is acceptable with regard to development plan policy;

- the effect of the development on the character and appearance of the area; and
- the effect of the development on highway safety, with particular regard to the revised access.

Reasons

Location

9. The appeal site is located on the eastern side of the A4173 Stroud trunk road, which runs between Stroud and Gloucester. It falls outside of any defined settlement limits, and is classified as open countryside.
10. Outside of defined settlement limits, Policy CP15 of the Stroud District Local Plan 2015 (Local Plan) provides stringent controls over new development in the countryside. Development will only be permitted where it complies with at least one of a number of specified criteria. The most relevant of these to the appeal scheme is where development is essential to the maintenance or enhancement of a sustainable farming or forestry enterprise.
11. The appellant has indicated that they intend to expand their agricultural operations from the site. However, beyond this assertion, limited information has been provided to explain how the site supports a sustainable farming enterprise, nor how this enterprise is intended to expand or evolve.
12. Without further information in this regard, I cannot determine whether the hardstanding is necessary to facilitate the intended expansion of the agricultural operations. Similarly, whilst the appellant contends that the revised access promotes improved highway safety to the site, there is little evidence to demonstrate why this improvement is needed. These factors are problematic, as the Local Highways Authority (LHA) has indicated that the pre-existing access would have been adequate for the site's pre-existing agricultural use. Moreover, and notwithstanding that the rubble, waste and building materials have been removed from the site, there is again a lack of information to demonstrate why this non-agricultural storage use would be essential to the maintenance or enhancement of the appellant's farming enterprise.
13. In turn, I cannot be sure that the development is essential to the continued running of the appellant's agricultural business, or even whether the appellant's pre-existing agricultural operations would constitute a sustainable farming enterprise, as required by the policy exception criteria. On the available evidence, I am therefore not persuaded that the development would meet the exception criteria for development in the countryside, as set out in Policy CP15. The location of the development is therefore unacceptable with regard to development plan policy.

Character and Appearance

14. The appeal site comprises a large agricultural field, approximately 1 hectare in size. To the rear of the field, there are two agricultural buildings, one of which is used for the storage of hay, and the other as stables. The surrounding area is distinctly rural in nature, with much of the appeal site being surrounded by open countryside.

15. Notwithstanding the agricultural buildings on the site, a Google image from 2019 shows that the bulk of the field was previously laid to grass. This image also shows a simple gated access into the land from the road. Prior to the development, the open and undeveloped nature of the appeal site would have contributed positively to the prevailing countryside character of the area.
16. Whilst the rubble, waste and building materials have now been removed, the storage of these materials would have introduced an industrial character to the appeal site, which would have sat uncomfortably within the character of the surrounding rural countryside. The extensive hardstanding leading up to the agricultural buildings to the rear of the field is also industrial/commercial in character, leading to further incongruity with the wider countryside landscape. The revised access, which includes much more extensive surfacing, kerbing and fencing, has a similar urbanising impact.
17. Moreover, the hardstanding significantly reduces the extent of open grassland within the appeal site. The 2019 Google image also shows that the expanded access has reduced the extent of grass verge bordering the highway. These elements, both of which result in the loss of green infrastructure in and around the site, undermine its overarching verdant credentials.
18. For these reasons, the development harms the character and appearance of the area. It conflicts with Policies CP14, CP15, ES6 and ES7 of the Local Plan, all of which say development should protect, conserve and enhance the natural environment, ensuring it is respectful to its surroundings. The development also conflicts with Policy ES8 of the Local Plan, which seeks to ensure development adequately protects trees, hedgerows and woodland. Finally, it conflicts with Policy EI5 of the Local Plan, which says farm diversification related development should be appropriate to its natural location in terms of scale, form, impact, character and siting.

Highway Safety

19. Part of the matters alleged to constitute the breach relates to alterations to the site access. Prior to the development, there was a simple gated access into the field. Following the alterations, the gate is now set back from the highway, and a paved access driveway has been introduced which leads up to the gate. The appellant contends that the alterations improve highway safety to the site, as it allows larger vehicles to pull-in to the site before opening the access gate, without disrupting the free flow of traffic along the A4173.
20. No substantive detail has been provided regarding any proposed change to the vehicle movements relating to the site, nor how these changes would relate to the site's use, whether now or in the future. As highlighted by the Local Highways Authority (LHA), the original field access would be considered adequate for its pre-existing occasional agricultural use but is unlikely to be acceptable for alternative uses which would increase the number of vehicles generated by the site. Indeed, any alternative use would need to be fully appraised with regard to technical detail of the proposed site access, to ensure safe access for that use could be achieved.
21. In this instance, whilst I appreciate the appellant's intention, no detailed technical drawings or swept path analysis have been provided as part of this appeal in respect of the revised access. This means I cannot determine whether the revised access is safe, nor whether satisfactory visibility to the

highway is achieved for vehicles accessing or egressing the appeal site. This is problematic, as it was apparent on my site visit that outward visibility is restricted by tall hedgerow either side of the access. Moreover, the A4173 is a classified road which is subject to the national speed limit. Unless adequate visibility is achieved, this means there would be significant risk of collision between vehicles egressing the site and those travelling along the road at speed. As highlighted by the LHA, the widened access may also encourage a greater number of vehicle movements to and from the appeal site. This could result in greater congestion along the road, particularly when vehicles are turning right into the site, which would further exacerbate these risks.

22. Notwithstanding any alternative use, even if I were to accept that the revised access improves highway safety with regard to the site's pre-existing agricultural use and thus consider granting permission for that part only of the deemed application, I cannot properly assess the extent of any such improvement, without supporting technical detail. In turn, I only attach limited weight to any potential improvement, as the extent of any improvement is uncertain (noting that the LHA has indicated that the former access was adequate with regard to the site's pre-existing agricultural use). In itself, this uncertain benefit is insufficient to outweigh the harm arising from the access with regard to the landscape character and appearance of the area.
23. For these reasons, I consider that the development risks unacceptable harm to highway safety. It therefore conflicts with Policy EI5 of the Local Plan, which says any farm diversification should not generate traffic of a type or amount inappropriate for the rural roads affected by the proposal. It also conflicts with paragraph 111 of the National Planning Policy Framework (2021), which is clear development may be refused on highway grounds if there would be an unacceptable impact on highway safety.

Other Matters

24. Whilst cited by the Council in its reasons, Policy ES4 of the Local Plan concerns flood risk, and is not relevant to the main issues in this appeal.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

James Blackwell

INSPECTOR